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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1278

FRED DOYLE,
Respondent,

vs.

MT. HEALTHY CITY SCHOOL DISTRICT
BOARD OF EDUCATION,
Petitioner.

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, Fred Doyle, hereby opposes granting the writ of certiorari in the above-captioned matter.

The opinions below, the basis of this Court's jurisdiction, and several of the Constitutional and statutory provisions involved are set out at pp. 2-4 and 20a-24a of the Petition. Additional statutory provisions involved are reproduced in the appendix to this Brief.

QUESTIONS PRESENTED

1. Whether a district court that properly assumes jurisdiction pursuant to 28 U.S.C. Section 1331 over a cause in which the demands of Plaintiff exceed the requisite jurisdictional amount,

is divested of jurisdiction where the ultimate relief afforded consists of reinstatement to a tenured teaching position and back pay in the amount of \$5,158.00.

2. Whether the Mount Healthy City School District Board of Education, a substantially autonomous body politic, should be accorded Eleventh Amendment immunity.

3. Whether the nonrenewal of a public school teacher's contract may be based, in substantial part, on an unconstitutional reason.

COUNTER-STATEMENT OF THE CASE

This action was instituted by Fred Doyle, Respondent herein, a certificated teacher and an employee of Petitioner from 1966 through 1971. The basis of the action was the decision of Petitioner Board of Education to non-renew Doyle's teaching contract, a decision that was motivated by and predicated upon constitutionally impermissible factors. At the time of his nonrenewal, Mr. Doyle was eligible for tenure. Under Ohio law, Ohio Revised Code Section 3319.11, any unconditional renewal of Doyle's limited contract would have resulted in tenure automatically.

The Complaint was filed in the United States District Court for the Southern District of Ohio. Plaintiff Doyle alleged jurisdiction under 42 U.S.C. Section 1983 and 28 U.S.C. Sections 1331, 1343(3) and 1343(4). Named as Defendants were the Mount Healthy City School District Board of Education, as an entity, the constituent members of the Board of Education, and the Superintendent of the school system. The Board acknowledged that sovereign immunity was not a bar to this litigation and proceeded to defend the claim on the merits.

After trial, the District Court held that jurisdiction was properly conferred by 28 U.S.C. Section 1331. It, therefore, did not consider the alternative jurisdictional grounds recited in the Complaint. The Court held that a constitutionally impermissible reason, Doyle's public criticism of the school's faculty dress code, played a substantial part in the Board's decision to non-renew Fred Doyle's teaching contract.

The District Court proceeded to reinstate Plaintiff Doyle to a tenure teaching contract and awarded him backpay of \$5,158.00. The Court further concluded that Doyle had vindicated an important public interest by this litigation and awarded him attorney fees in the amount of \$6,343.16. All relief was awarded against the Mount Healthy Board of Education. The individually named Defendants—the Board members and the Superintendent—were dismissed. Since the Board has acknowledged its amenability to suit, the district court made no finding with respect to an Eleventh Amendment immunity claim.

The Mount Healthy Board of Education appealed to the Court of Appeals for the Sixth Circuit. The reviewing Court concluded that there was substantial evidence in the record to support the district court's findings, and that the lower court correctly held that the Board's refusal to renew Fred Doyle's teaching contract was based on a constitutionally impermissible reason. Accordingly, the Appellate Court affirmed that portion of the District Court judgment directing the reinstatement of Doyle and the award of compensatory damages. The Court of Appeals further concluded that an award of attorney fees was not proper and proceeded to vacate and set aside the award of attorney fees.

This cause is now before this Supreme Court of the United States on the Petition for Certiorari filed by the Mount Healthy School District Board of Education.

REASONS FOR DENYING THE WRIT

1. The Holding Below Is in Conformance With Settled Principles of Law and Does Not Conflict With Prior Decisions of This Court or Other Circuit Courts of Appeal.

A. A district court that properly assumes jurisdiction pursuant to 28 U.S.C. Section 1331 over a cause in which the demands of plaintiff exceed the requisite jurisdictional amount, is not divested of jurisdiction where the ultimate relief afforded consists of reinstatement to a tenured teaching position and backpay in the amount of \$5,158.00.

Plaintiff Doyle alleged jurisdiction under 42 U.S.C. Section 1983 and 28 U.S.C. Sections 1331, 1343(3) and 1343(4). The district court concluded that jurisdiction was properly conferred by 28 U.S.C. Section 1331.¹ Petitioner challenges this finding, arguing that the requisite jurisdictional amount of \$10,000 was not satisfied. Petitioner's claim is frivolous.

In *Horton v. Liberty Mutual Insurance Co.*, 367 U.S. 348 (1961), this Court announced the following standards to determine whether the jurisdictional amount is satisfied:

"The general federal rule has long been to decide what the amount in controversy is from the complaint itself, unless it appears or is in some way shown that the amount stated in the complaint is not claimed 'in good faith.' In deciding this question of good faith we have said that it 'must appear to a legal certainty that the claim is really

¹ Having so found, the trial court declined to consider alternative jurisdictional grounds. Since the district court made no findings with respect to the remaining jurisdictional allegations, and since 28 U.S.C. Section 1331 does vest jurisdiction over this cause, this Brief will not consider the alternative jurisdictional claims recited in the Complaint.

for less than the jurisdictional amount to satisfy dismissal.' " (footnotes omitted) *Horton v. Liberty Mutual Insurance Co.*, supra, at 353.

The gravamen of the instant lawsuit is Petitioner's unconstitutional refusal to issue Doyle a tenured teaching contract. Respondent Doyle demanded by his Complaint, exclusive of interest and costs, reinstatement and the issuance of a tenured teaching contract, \$50,000.00 in damages and attorney fees. The amount demanded included compensatory damages that had accrued as a result of the termination, and damages resulting from the denial of future employment attendant to the Board's refusal to issue a continuing contract.

Clearly, the sum demanded by the Complaint exceeds the statutory amount. Moreover, it represents a legitimate expectation given the deprivation of employment under a tenure contract. Indeed, as noted by the district court, the immediate financial deprivation suffered by Plaintiff's denial of a contract for the 1971-72 school year, exceeded \$10,000.00. Further, the denial of a tenure contract affects future employment.

In determining whether the jurisdictional amount is satisfied, a federal court may look to future earnings, and the value of other employment benefits. See: *Chaudoin v. Atkinson*, 494 F. 2d 1323 (3rd Cir., 1974); *Nord v. Griffin*, 86 F. 2d 481 (7th Cir., 1936); *Friedman v. International Association of Machinists*, 220 F. 2d 808 (DC Cir., 1955); *White v. Bloomberg*, 345 F. Supp. 133 (Maryland, 1972), *Patterson v. City of Chester*, 389 F. Supp. 1093 (Pa., 1975). Given the deprivation of employment under a tenure contract, it cannot be said, to a "legal certainty," that Plaintiff's claim was for less than the statutory amount.

The district court clearly had jurisdiction over this cause. That jurisdiction is not divested, as Petitioner seems to be arguing, because the ultimate recovery consisted of \$5,185.00 and rein-

statement under a continuing contract of employment. In so arguing, Petitioner incredibly fails to assign a monetary value to reinstatement under a tenure contract. This is clearly improper. See *Chaudoin v. Atkinson*, supra. Moreover, it is well settled that failure to recover the statutory amount does not divest a federal court of jurisdiction. As this court explained:

"The inability of Plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction." *St. Paul Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, at 289.

Even if one assumes that the ultimate recovery fell below the jurisdictional requisite, this would not deprive the federal court of jurisdiction.

Patently, more than \$10,000.00 is in controversy in the instant cause. Since Petitioner does not deny the existence of a federal question, it is manifest that jurisdiction is conferred by 28 U.S.C. Section 1331.

B. The Mount Healthy City School District Board of Education is a substantially autonomous body politic and should not be accorded Eleventh Amendment immunity.

Petitioner School Board claims that the Eleventh Amendment precludes an award of damages. It is clear that only a state, and not local governmental entities, can claim the protection of the Eleventh Amendment. Plainly, the exemption of political subdivisions from the operation of the Eleventh Amendment is well recognized and has been consistently reaffirmed by this Court. See *County of Lincoln v. Luning*, 133 U.S. 529 (1890), *Hopkins v. Clemson College*, 221 U.S. 636 (1911), *Griffin v. School Board of Prince Edward County*, 377 U.S. 218 (1964), *Edelman v. Jordan*, 415 U.S. 651, at 667, n. 12 (1974).

The Mount Healthy City School District is a local governmental body created by the laws of Ohio, and vested by those laws with extensive powers and authority. By virtue of the Ohio statutory framework, this Defendant is a local governmental body that is substantially independent from the state, and, therefore, does not enjoy that immunity reserved for the state.

Ohio boards of education are comprised of local officials (Ohio Revised Code, Section 3313.01). The responsibilities of each board is limited to the schools within the district (Ohio Revised Code, Section 3313.47). Legal representation is afforded by county prosecuting attorneys or city solicitors (Ohio Revised Code, Section 3313.35). The local nature of district boards of education should be contrasted with the State Board of Education created by Chapter 3301, Ohio Revised Code. The State Board of Education has statewide duties and is represented by the Attorney General, the state's attorney.

Ohio school boards are accorded a great deal of autonomy. Their status and powers are enumerated in Chapter 3313, Revised Code. Each school board is a "body politic and corporate" (Revised Code 3333.17).² Among the powers granted boards of education in Chapter 3313 of the Code is the capability to sue and be sued, to contract and be contracted with, to acquire, hold, possess and dispose of real and personal property (Revised Code 3313.17); to make rules and regulations for its government and the government of its employees, pupils, and other persons entering school grounds (Revised Code 3313.20); and to manage and control all the public schools in its district (Revised Code 3313.47). In exercising these broad grants of power,

² Indeed, at trial, Petitioner Board acknowledged that 3313.17, Ohio Revised Code, would constitute a waiver of sovereign immunity if the Board was deemed to have such immunity. Since Respondent is confident that the Eleventh Amendment cannot be invoked by this Defendant, the reach of 3313.17, or its effect as a waiver, will not be addressed herein.

Ohio boards of education are invested with extensive discretionary authority. See, e.g., *Greco v. Roper*, 145 O. St. 243 (1945), *State ex rel. Ohio High School Athletic Association v. Judges of Court of Common Pleas of Stark County*, 173 Ohio St. 239 (1962), *Dayton Classroom Teachers Association v. Dayton Board of Education*, 41 Ohio St. 2d 127 (1975). Because of the powers afforded local boards of education, and the discretion allowed boards in the exercise of these powers, Petitioner Board should be deemed an autonomous governmental unit and thereby not entitled to sovereign immunity.

One of the purposes of the Eleventh Amendment is to protect state treasuries. In *Edelman v. Jordan*, supra, at 663, this Court observed:

“the rule has evolved that a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment.”

Pursuant to Ohio Revised Code, Chapter 5705, an Ohio school board has taxing powers. Indeed, the majority of school district funding is derived from local property taxes and not from state revenues. See *Baldwins Ohio School Law*, Section T123.02, page 148. Consequently, it cannot be said that the judgment rendered in the instant case “must” be satisfied by the state treasury.

To support its claim of immunity, Petitioner depends primarily upon state decisional law which purportedly accords Ohio school boards immunity. However, Ohio law clearly recognizes that school boards do not possess that immunity reserved to the state. In *State ex rel. Board of Education v. Gibson*, 130 Ohio St. 318 (1935), the Ohio Supreme Court held that the state’s sovereign immunity would not be extended to local boards of education. The Court’s unanimous opinion was announced in the First Syllabus:

“Immunity attaching to the State does not accrue to the benefit of a board of education or school district.” *State ex rel. Board of Education v. Gibson*, supra, at 318.

Admittedly, the Ohio courts have carved out a narrow tort immunity for school boards. But the immunity fashioned by the Ohio courts, and relied upon by Petitioner, is narrowly limited to common torts, and is not a recognition that school boards share the sovereignty reserved for the State.

Prior to the instant cause, a three judge district panel in *Lopez v. Williams*, 372 F. Supp. 1279 (SO Ohio, 1973), aff’d. sub. nom, *Goss v. Lopez*, 419 U.S. 565 (1975), concluded that the Columbus Board of Education “is not immune from suit,” *Lopez v. Williams*, supra, at 1294. The conclusion of the *Lopez* court and that of the courts below in the instant cause is consistent with numerous federal decisions which recognize that local school boards are not insulated by the Eleventh Amendment. See: *Burt v. Board of Trustees*, 521 F. 2d 120 (4th Cir., 1975); *Adams v. Renkin County Board of Education*, 524 F. 2d 928 (5th Cir., 1975); *Hutchinson v. Lake Oswego School District*, 519 F. 2d 961 (9th Cir., 1975); *Fabrizio and Martin, Inc. v. Board of Education*, 290 F. Supp. 945 (N.Y., 1968); *King v. Caesar Rodney School District*, 396 F. Supp. 423 (Del., 1975); *Morris v. Board of Education*, 401 F. Supp. 188 (Del., 1975); *Smith v. Concordia Parish School Board*, 387 F. Supp. 887 (Lou., 1975); *Seamon v. Spring Lake Park Independent School District*, 387 F. Supp. 1168 (Minn., 1974). These courts concluded, as did the court below, that a local school district is not a state agency for purposes of the Eleventh Amendment.

Thus, the Eleventh Amendment is not a bar to the lower court’s assumption of jurisdiction to redress the constitutional wrongs inflicted upon Respondent Doyle.

C. The nonrenewal of a public school teacher's contract lawfully may not be based, in substantial part, on an unconstitutional reason.

Upon notification of his nonrenewal, Respondent Doyle requested reasons for the Board's action. The Petitioner Board, through its Superintendent, responded by letter. One reason cited in the letter was a telephone call to a radio station during which Doyle discussed a newly implemented dress code for teachers. During the call, Doyle accurately described the announced School Board's policy. At trial, several Board members cited this incident as a reason for the nonrenewal.

The district court concluded that the call to the radio station was constitutionally protected activity and could not be the basis for Doyle's discharge. While other reasons may have been present, the lower court held that a nonrenewal could not stand that is based, in part, on a constitutionally defective reason. In so holding, the lower court applied the well-settled principle that, even if a teacher's exercise of First Amendment rights of speech and association is only partially a factor in the nonrenewal, the nonrenewal is still constitutionally impermissible. See *Gray v. Union County Intermediate Education District*, 520 F. 2d 803 (9th Cir., 1975); *Skehan v. Board of Trustees of Bloomsburg State College*, 501 F. 2d 31, 39 (3rd Cir., 1974), vacated and remanded on other issues, 421 U.S. 983; *Fluker v. Alabama State Board of Education*, 441 F. 2d 201, 210 (CA 5, 1971); *Gieringer v. Center School District No. 58*, 477 F. 2d 1164, 1166 (CA 8, 1973); *Cook County Teachers Union Local 1600 AFT v. Byrd*, 456 F. 2d 882, 888 (CA 7, 1971); *Simard v. Board of Education*, 473 F. 2d 988, 995 (2nd Cir., 1973); *Roth v. Board of Regents*, 310 F. Supp. 972, 981, 982 (Wisc., 1970), aff'd. 466 F. 2d 806 (CA 7, 1971), rev'd and rem. on other grounds, 408 U.S. 564; *Dause v. Bates*, 369 F. Supp. 139, 147 (Ken., 1973); *Lusk v. Estes*, 361 F. Supp. 653, 660 (Tex., 1973).

Petitioner claims that other reasons would support its decision to nonrenew Doyle's teaching contract. It suggests that the alleged presence of other reasons should somehow excuse the Board's admitted reliance upon a constitutionally impermissible reason.

Petitioner, citing *Pickering v. Board of Education*, 391 U.S. 563 (1968), first urges the court to balance the First Amendment claims against the need for orderly school administration. In *Pickering v. Board of Education*, 391 U.S. 563 (1968), this Court held that a teacher's public criticism of his superiors on matters of public concern is constitutionally protected and constitutes an impermissible basis for termination of his employment. The teacher in *Pickering* wrote a letter to a newspaper criticizing certain school policies. Fred Doyle communicated his displeasure with certain school policies by telephone call to a radio station. There is no significant difference between the teacher involved in *Pickering* and Respondent Doyle.

Pickering does allude to a balancing test. But the balancing referred to in *Pickering* concerned whether a constitutional right was exercised in such an offensive manner as to undermine orderly school administration and thereby forfeit constitutional protection. In the instant cause, Petitioner School Board did not claim that the information imparted by Doyle to the radio station was false or defamatory, or that it interfered with Doyle's classroom duties or the operation of school. Thus, under *Pickering*, the call would enjoy constitutional protection. No constitutionally acceptable reason for a discharge was relied upon in *Pickering*. Thus, *Pickering* did not address the situation where an unconstitutional reason was weighed against reasons that were not constitutionally infirm.

Petitioner further claims that "No prior court has required a reinstatement unless the constitutionally impermissible reasons played a substantial part in the nonrenewal". (Emphasis that

of Petitioner). Petitioner apparently seeks to distinguish between a discharge predicated in part on an improper reason, and a discharge based in "substantial" part on an improper reason. Whatever the value of the distinction, the lower court found that "a non-permissible reason did play a substantial part" in the nonrenewal decision. This factual finding was affirmed on appeal. Thus, the decision of the court below would satisfy even the standard urged by Petitioner.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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APPENDIX

In addition to the statutes cited in the Petition, the following provisions of the Ohio Revised Code are also involved in this proceeding:

[MEMBERSHIP]

§ 3313.01 Membership of boards of county, local and exempted village school districts. (GC § 4832)

In county, local, and exempted village school districts, the board of education shall consist of five members who shall be electors residing in the territory composing the respective districts and shall be elected at large in their respective districts.

§ 3313.20 Rules and regulations; employee attendance at professional meetings, expenses.

The board of education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises. Rules and regulations regarding entry of persons other than students, staff, and faculty upon school grounds or premises shall be posted conspicuously at or near the entrance to such grounds or premises, or near the perimeter of such grounds or premises if there are no formal entrances, and at the main entrance to each school building. Any employee may receive compensation and expenses for days on which he is excused, in accordance with the policy statement of the board, by the superintendent of such board or by a responsible administrative official designated by the superintendent for the purpose of attending professional meetings as defined by the board policy, and the board may provide and pay the salary of a substitute for such days. The expenses thus incurred by an employee shall be paid by the board from the appropriate fund of the school district or the county board fund provided that

statements of expenses are furnished in accordance with the policy statement of the board.

Each city, local, and exempted village school district shall adopt a written policy governing the attendance of employees at professional meetings.

§ 3313.35 Counsel for school boards.

Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving. He shall prosecute all actions against a member or officer of a board for malfeasance or misfeasance in office, and he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity. In joint vocational school districts the legal adviser shall be the prosecuting attorney of the most populous county containing a school district which is a member of the joint vocational school district. When such civil action is between two or more boards in the same county, the prosecuting attorney shall not be required to act for either of them. In city school districts, the city solicitor shall be the legal adviser and attorney for the board thereof, and shall perform the same services for such board as required of the prosecuting attorney for other boards of the county. Such duties shall devolve upon any official serving in a capacity similar to that of prosecuting attorney or city solicitor for the territory wherein a school district is situated regardless of his official designation. In a district which becomes a city school district pursuant to section 3311.10 of the Revised Code, the legal adviser shall be the solicitor of the largest of the municipal corporations all or a part of which is included within the school district boundaries. No compensation in addition to such officer's regular salary shall be allowed for such services.

§ 3313.47 Management and control of schools vested in board of education. (GC § 4836)

Each city, exempted village, or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district. If the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings, and such other employees as are provided for in such annual appropriation resolution.
